SUPREME COURT, U. S.
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 73-228

NEW JERSEY COUNTY AND MUNICIPAL COUNCIL NO. 61, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, NEW JERSEY PUBLIC AND CIVIL SERVANTS EMPLOYEES LOCAL 1959, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, ROBERT C. MURPHY, FRANK BASSILO AND RITA FURNISS,

Petitioners,

vs.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, JERRY WURF, individually and as International President of American Federation of State, County and Municipal Employees, LOUIS KAPLAN, individually and as Trustee of New Jersey Public and Civil Servants Employees, Local 1959 and CHARLES KELLER,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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SUPREME COURT OF THE UNITED STATES

No. _____

NEW JERSEY COUNTY AND MUNICIPAL COUNCIL NO. 61, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, NEW JERSEY PUBLIC AND CIVIL SERVANTS EMPLOYEES LOCAL 1959, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, ROBERT C. MURPHY, FRANK BASSILO AND RITA FURNISS,
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AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, JERRY WURF, individually and as International President of American Federation of State, County and Municipal Employees, LOUIS KAPLAN, individually and as Trustee of New Jersey Public and Civil Servants Employees, Local 1959 and CHARLES KELLER,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

The petitioners New Jersey County and Municipal Council No. 61, American Federation of State, County and Municipal Employees, AFL-CIO, New Jersey Public and Civil Servants Employees Local 1959, American Federation of State, County and Municipal Employees, AFL-CIO, Robert C. Murphy, Frank Bassilo and Rita Furniss respectfully pray that a *writ of certiorari* issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered in this proceeding on May 4, 1973.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, and the opinions of the Federal District Court for the District of New Jersey appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on May 4, 1973, reversing the judgment of the District Court; and this petition for *certiorari* was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

1. Whether under Title III of the Labor Management Reporting and Disclosure Act of 1959 federal district courts have subject matter jurisdiction over trusteeship proceedings involving a labor organization and one of its constituent local unions, when the local union's charter limits its membership exclusively to public and civil service employees.

STATUTORY PROVISIONS INVOLVED

29 U.S.C. §402(i) and (j).
29 U.S.C. §§461-464.

STATEMENT OF THE CASE

The action was to determine whether the defendant, American Federation of State, County and Municipal Employees, AFL-CIO (International herein) lawfully placed the plaintiff (Local 1959 herein) in trusteeship in accordance with the requirements of §304 of the Labor Management Reporting and Disclosure Act of 1959 (popularly known as the Landrum-Griffin Act), 29 U.S.C. §462. That act provides in Section 304 that any member or subordinate body of a labor organization aggrieved by a trusteeship may bring an action in the United States District Court for relief (29 U.S.C. §464(a)). The detailed factual context from which the narrow jurisdictional issue arose is presented in the opinions of the trial court.

Summarily, it is acknowledged that the International charters both public employee and private employee locals and that the plaintiff at bar is exclusively a public employee union. This triggered the jurisdictional issue. In the United States District Court, both the February 29, 1972 opinion which resolved in plaintiff's favor the motion addressed to jurisdiction and the final opinion of June 20, 1972 which dealt with subject jurisdiction in Part "III" thereof, Chief Judge Coolahan after an exhaustive analysis of the issue found that the Court had subject matter jurisdiction.

The opinion of Circuit Judge Hunter for the Third Circuit which resolved only the single issue of jurisdiction found to the contrary and reversed the District Court judgment and directed that the complaint be dismissed for lack of jurisdiction.

REASONS FOR GRANTING WRIT

1. The issue is of novel import in the country and is significant to public employee locals and the employing units which bargain with them and to the public. This is the first appellate case involving a trusteeship by a labor organization over a subordinate body consisting exclusively of employees of a public employer. The precedent has far reaching effects. The public as well as the public employees are affected by unlawful power grabs of locals in guise of trusteeships. See *Legislative History of Labor Management and Disclosure Act 1959*, Vol. 1 p. 412-415, Vol. 2 p. 969, 991-992.

2. This issue is also now pending rehearing on appeal in the Tenth Circuit in the matter of *Colorado Labor Council v. American Federation of Labor and Congress of Industrial Organizations*, (D. Colo. 1972). The appeal docket is No. 72-1701. The plaintiff in that case was composed of 250 labor unions in the State of Colorado. It was not a labor organization as defined under Section 3(1) of the Act. A trusteeship was invoked by President Meany when the Council endorsed the presidential candidacy of Senator McGovern in contravention of a resolution adopted by the AFL-CIO Executive Council to refrain from endorsing any candidates in the 1972 Presidential election. As to the jurisdictional issue, the trial court determined that although the plaintiff was not a labor organization, it is a subordinate body as that term is used in Title III. Rehearing is now pending of the appellate reversal.

3. The reasoning in the opinion of the Third Circuit Court of Appeals contains a *non sequitur*. The fact that Congress when considering the matter of Trusteeship in Section 302 of Title III employed the term "subordinate body" rather than "labor organization" does not lead to

the conclusion that the words carry the same import or are interchangeable. On the contrary, the use of the term "subordinate body" rather than "subordinate labor organization" was the legislative manifestiation that under Section 302 of Title III, a "subordinate body" as those words are used in their usual sense, though the body not be a "labor organization" as defined in the Act, should be able to trigger federal jurisdiction for a review of improperly established trusteeship. There is no precedent. The Third Circuit Court's opinion purports to be founded on a rationalization of the legislative intent rather than an analysis of sound social policy. Senator Goldwater, one of the bill's proponents said of the effect of the Conference Committee Report on Section 302:

> ". . . the Landrum-Griffin Bill uses language *broad enough to encompass* every trusteeship imposed by one union over a subordinate body." (Cong. Rec. 19762-3, Senate, September 14, 1959, emphasis added).

CONCLUSION

For these reasons, a *writ of certiorari* should issue to review the judgment and opinion of the Third Circuit.

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UNITED STATES DISTRICT COURT

District of New Jersey

NEW JERSEY COUNTY AND MUNICIPAL COUNCIL NO. 61, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, NEW JERSEY PUBLIC AND CIVIL SERVANTS EMPLOYEES, LOCAL 1959, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, ROBERT C. MURPHY, FRANK BASSILO and RITA FURNISS,

Plaintiffs,

vs.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, JERRY WURF, individually and as International President of American Federation of State, County and Municipal Employees, LOUIS KAPLAN, individually and as Trustee of New Jersey Public and Servants Employees, Local 1959, and CHARLES KELLER,

Defendants.

Opinion and Judgment of District Court
February 29, 1972

Appearances:

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COOLAHAN, District Judge:

This is an action to determine whether defendant, American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter "International"), acting by its President, defendant Jerry Wurf, lawfully placed the plaintiff, New Jersey Public and Civil Service Employees, Local 1959 of the International (hereinafter "Local 1959"), in trusteeship and appointed defendant Louis Kaplan trustee in accordance with the requirements of Section 304 of the Labor-Management Reporting and Disclosure Act of 1959 (popularly known as the Landrum-Griffin Act), 29 U.S.C. §462. Defendants attack the jurisdiction of this Court to entertain this action on the grounds that plaintiffs have failed to exhaust intra-union and administrative remedies and that the plaintiff Local 1959 is not a labor organization within the coverage of the Landrum-Griffin Act. Neither argument persuades the Court to dismiss this matter for lack of jurisdiction.

A brief synopsis of the facts will suffice to demonstrate the jurisdiction of the Court. Local 1959 is a recently chartered union designated by the International as the bargaining agent for all public employees in Hudson County, New Jersey. At one time all New Jersey locals belonging to the International were affiliated with an intermediate body known as Council #1. Councils are intermediate administrative and servicing organizations which render advice and assistance to locals in an effort to relieve the International office of the day-to-day particulars in which the local are involved. The creation of such councils is a widespread union practice not limited to the International before the Court now. A plan later emerged, under the leadership of Louis Kaplan, Area Director of the International, for the creation of multiple councils within New Jersey to replace the existing single council, which was apparently regarded as too unwieldy

to discharge its administrative functions. Local 1959 was to become affiliated with Council #61.

The long and tumultuous history of this restructuring need not be recounted at this point in the case. It is enough to note that the adoption of a new constitution and by-laws, the issuance of a new charter, and the election of new officers for Council #61 caused considerable political friction between Local 1959 and the International, which was compounded by what plaintiffs regard as interference by the International with the autonomy of Local 1959. The International claims that improper election procedures and incompetent leadership have caused Local 1959 to lose its status as bargaining representative for numerous units of public employees, which have opted for representation by other unions, and that the internal administration of Local 1959's affairs has likewise been impaired. International President Jerry Wurf therefore appointed Louis Kaplan trustee of Local 1959 to halt what the International saw as the gradual dissipation of the local's membership and resources. Local 1959 responds that the action of placing the local under trusteeship was simply a legitimized ouster of local officers in favor of International designatees, in short, a power grab.

Section 302 of the Ladrum-Griffin Act allows the imposition of a trusteeship by a parent union body over a subordinate body in accordance with the constitution and by-laws of the parent for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of the labor organization (29 U.S.C. §462). Local 1959 contends strongly that no valid purpose has been asserted by the

International and therefore it has brought this action to dissolve the trusteeship and return control of the local to its officers.

The International claims that any action in this Court must be preceded by a complaint to the Secretary of Labor, his investigation, and action upon the complaint, as well as exhaustion of all intra-union procedures by which the imposition of the trusteeship might be contested. Section 304 of the Act empowers any member or subordinate of a labor organization to allege before the Secretary that a trusteeship has been improperly imposed or that the trustee has unlawfully exceeded his powers. If, upon investigation, the Secretary concludes that there is probable cause to believe that a violation has occurred and has not been remedied, he is obliged to bring an action in a United States district court for appropriate relief. Alternatively, the Act provides in Section 304 that any member or subordinate body of a labor organization affected by a violation may bring an action on its own initiative in a United States district court for such relief (29 U.S.C. §464(a)). Numerous courts have found, therefore, that the plain language and purpose of the Act refute any reading of Section 304 which would limit the alternative of private litigation to supplementary or secondary relief. Accordingly, these courts have held that local unions and their members need not exhaust the administrative remedy provided by the Act before an action is brought against the parent body in federal court. United Brotherhood of Carpenters & Joiners of America v. Brown, 343 F.2d 872, 880 (10th Cir. 1965); Schonfeld v. Raferty, 271 F. Supp. 128, 145 (S.D.N.Y.), aff'd, 381 F.2d 446 (2d Cir. 1967; Executive Board, Local Union No. 28, I.B.E.W. v. International Brotherhood of Electrical Workers, 184 F. Supp. 649 (D. Md. 1960). Contra, Cox v. Hutcheson, 204 F. Supp.

442 (S.D. Ind. 1962); Flaherty v. McDonald, 183 F. Supp. 300 (S.D. Cal. 1960); Rizzo v. Ammond, 182 F. Supp. 456 (D. N.J. 1960). In Executive Board, supra, the court reached its decision in favor of jurisdiction by relying upon the clear meaning of Section 304, the practical need for an alternative procedure for obtaining relief, the legislative history of the Act, and the construction placed on Section 304 by the Secretary in his interpretive bulletins. Courts which have considered the problem recently have unanimously fallen in line so that the issue is now so well settled it merits no further elaboration.

But the International further contends that plaintiffs have failed to exhaust intraunion procedures by which they may challenge the propriety of the trusteeship. This argument has not been so thoroughly explored by the courts, but I see little reason in excusing plaintiffs from exhausting administrative relief but requiring them to file through internal deliberations in the hopes of resolving their differences. Despite its belief that trusteeships were valid instruments to prevent subversion, corruption and mismanagement, Congress was entirely familiar with the train of abuses attendant to union trusteeships. Hearings before the McClellan committee revealed that "in some instances trusteeships have been used as a means of consolidating the power of corrupt union officers, plundering and dissipating the resources of local unions, and preventing the growth of competing political elements within the organization." S. Rep. No. 187, 86th Cong., 1st Sess. (1959), cited in 2 U.S. Code Cong. & Adm. News 2318, 2333 (1959). There can be little doubt that Congress firmly resolved to curb the power of a parent national or international labor union to impose a trusteeship upon a local union. Neither the Senate nor the House bill provided for exhaustion of intraunion remedies. Nor did either reporting committee discuss such a proviso. Quite notably,

exhaustion of the internal grievance machinery is demanded of complainants in matters concerning Title I of the Act, which is that part of the legislation that sets out the union member's bill of rights. In that case, the union member alleging a violation of the statute must exhaust "reasonable hearing procedures" within his union not to exceed a four month period of deliberation. It seems to the Court that the omission of a similar requirement from Title III, the trusteeship provisions, was not an error or oversight in draftsmanship, but instead a conscious recognition of the grievous injury which may be inflicted upon a local union during even a relatively short period if the local is at the mercy of a corrupt or usurpative parent body. Moreover, there is the practical implication that it would be futile, if not foolhardy, for the local to protest the unlawful seizure of its autonomy to the very ones responsible if a malicious motive be present. The futility of such an appeal is obvious. Considering the potential for abusing the use of trusteeships and the fruitlessness of objections thereto in substantially numerous cases,* the

* The difficulties incident to a hearing upon the local's objections are nowhere more obvious than in this case. A hearing was in fact recently convened to determine the validity of the trusteeship. Plaintiffs complained of faulty notice and lack of particularized charges which would have justified the trusteeship. The Hearing Officer overruled these objections and plaintiffs proceeded to participate in the hearing without waiving their objections. The International was represented by Louis Kaplan, who had been appointed trustee of Local 1959 and who was thereby bound to observe a strict and enthusiastic impartiality in the matter before the Hearing Officer. Although a transcript of those proceedings is not available, plaintiffs allege that Kaplan, who appears to have been at constant odds with the local over the years, introduced evidence to show that Local 1959, through its ineptitude, had lost a representation election for county employees; which result threatened the continued existence of the local; that Local 1959 failed to pay its per capita tax to Council #1; that an attorney was wrongfully engaged by the local, thus dissipating funds; that Local 1959 was not properly performing their responsibilities under collective bargaining agreements; that Local 1959 failed to follow democratic procedures set out in the International's election code during the July 1, 1971 elections; and that Local 1959 had violated

court cannot read a requirement of exhausting intraunion procedures into Section 304(a) of the Act. Other courts have similarly interpreted the Act, at least when exhaustion, as it certainly must in most instances, would seriously impair the ability of the local to prevent irreparable harm. United Brotherhood of Carpenters & Joindrs of America v. Brown, supra; Benish v. Retail Clerks Int'l. Ass'n, Civil Action No. 67-472, 67 L.R.R.M. 2601 (D. Ore. 1968).

Finally, the International argues that Local 1959 is outside the remedial coverage of the Landrum-Griffin Act because it is not a "labor organization" as defined by Section 3, 29 U.S.C. §402(i). In this respect, defendants have simply misread the jurisdictional provision of Title III of the Act. Section 304(a), 29 U.S.C. §464 provides that "[a]ny member or subordinate body of a labor organization" having a grievance resulting from the imposition of a trusteeship may bring an action in federal court. But there is no requirement in Title III actions that the plaintiff be a labor organization, as, indeed, such would be impossible in the case of an individual plaintiff. Therefore, plaintiffs need show only that the International is a labor organization within the meaning of the Act. Against the weight of this argument, the defendant International cites Cobb v. International Union, American Federation of State, County and Municipal Employees, AFL-CIO, Civil Action No. 31282 (E.D. Mich., Aug. 30, 1968), in which the court dismissed an action by a local composed solely of government employees brought against the same international defending in the present action. The court said

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other provisions of the International's constitution. Plaintiffs also contend that their ability to call rebutting witnesses and to cross-examine was so severely curtailed that, considering also the notice deficiencies, the hearing was a denial of due process. This much is certain: Kaplan violated clear fiduciary duties owing to Local 1959 when he undertook to represent the International at the hearing.

that the substantive matters and relief requested in the complaint (which the court did not discuss) dealt with the inter-workings of the local and its relationship to the International so that to assume jurisdiction over the case would have the effect of applying the Act to a body not subject to its coverage. The court did not elaborate upon its conclusion, nor did it discuss the language of Section 304(a) of the Act, 29 U.S.C. §464(a). With all due respect, I am unpersuaded to ignore the plain language of that jurisdictional provision, which simply requires that the defendant parent body be a labor organization within the meaning of Section 3(i) of the Act, 29 U.S.C. §402(i). Although the matter has not been argued at length by the parties, the Court is satisfied that the International is in fact such a labor organization.

Labor organizations are defined by Section 3(i) of the Act, 29 U.S.C. §402(i). To fall within the coverage of that definition, a body must be one which engages in an industry affecting commerce and represents employees in their negotiations with their employers with regard to any of the terms or conditions of employment normally the subject of collective bargaining negotiations "Employer", as defined in Section 3(e) of the Act, 29 U.S.C. §402(e), however, specifically excludes the United States or any corporation wholly owned by the United States or any state or any political subdivision thereof. As the charter of Local 1959 limits it to public employees of Hudson County, New Jersey, it is not a labor organization as defined by those sections. The International concedes, nonetheless, that it has chartered local unions which do not represent public employees exclusively. Where a parent national or international has chartered a local which negotiates for collective bargaining with a nonpublic employer engaged in an industry affecting commerce, the parent is

a labor organization within the meaning of Section 3(i) of the Act, 29 U.S.C. §402(i), even though public employee locals predominate the parent and despite the overwhelmingly nonpublic membership of a given mixed local.

It is the policy of the Secretary of Labor to construe the language of Section 3(i) of the Act, 29 U.S.C. §402(i), to include all labor organizations of any kind other than those which are clearly outside the scope of the Act. 29 C.F.R. §451.2 (rev. 1971). As to the "employer" requirement of Section 3(i) of the Act, 29 U.S.C. §402(i), the Secretary has said:

> In defining "employer," Section 3(e) expressly excludes the "United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof." The term "political subdivision" includes, among others, counties and municipal governments. A labor organization composed entirely of employees of the governmental entities excluded by Section 3(e) would not be a labor organization for the purposes of the Act. However, in the case of a national or international labor organization composed of both government locals and non-government or mixed locals, the parent organization as well as its mixed and non-government locals would be "labor organizations" and subject to the Act. In such case, the locals which are composed entirely of government employees would not be subject to the Act. . . .

29 C.F.R. §451.3(a)(4) (rev. 1971). Elsewhere the Secretary has ruled:

> A national or international union whose membership consists predominantly of employees of governmental agencies is nevertheless a labor organization

> within the meaning of the Act if *any* of its locals represents members who are not employed by State or other governmental instrumentalities. (Emphasis in original.)

Office of Labor-Management and Welfare Pension Reports, U.S. Dept. of Labor, LMRDA Interpretative Manual §030.636 (undated). Respecting the requirement that the parent must be one engaged in an industry affecting commerce, the International falls within Section 3(j)(3) of the Act, 29 U.S.C. §402(j)(3), which deems an organization to be so engaged if it has chartered a local union or subsidiary body which is representing or actively seeking to represent employees under the provisions of the National Labor Relations Act. The Secretary has interpreted this section to mean that

> . . . a labor organization not otherwise subject to the Act, such as one composed of Government employees, would appear to be "engaged in an industry affecting commerce" and, therefore, subject to the Act if it charters one or more local labor organizations which deal with an "employer" as defined in Section 3(c). This category includes, among others, a federation of national or international organizations which directly charters local bodies.

29 C.F.R. §451.4(d) (rev. 1971) (footnote omitted). The congressional mandate for such a sweeping classification is evident not only on the face of the Landrum-Griffin Act, but also in the legislative history. H.R. Rep. No. 741, 86th Cong., 1st Sess. (1959), cited in 2 U.S. Code Cong. & Adm. News 2424, 2451 (1959). Following the guidelines enunciated by the Secretary, which the Court believes correctly gauge the intent of the Act, I find that the defendant International is a labor organization within the

meaning of subsections 3(e), (i), (j)(3) of the Act, 29 U.S.C. §402(e), (i), (j)(3) and therefore liable to suit under Section 304(a) of the Act, 29 U.S.C. §464(a).

The motion to dismiss for lack of jurisdiction will be denied.

Let an appropriate order be submitted.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

NEW JERSEY COUNTY AND MUNICIPAL COUNCIL NO. 61, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; NEW JERSEY PUBLIC AND CIVIL SERVANTS EMPLOYEES, LOCAL 1959, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; ROBERT C. MURPHY, FRANK BASSILO and RITA FURNISS,

Plaintiffs,

vs.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; JERRY WURF, individually and as International President of American Federation of State, County and Municipal Employees, LOUIS KAPLAN, individually and as Trustee of New Jersey Public and Civil Servants Employees, Local 1959, and CHARLES KELLER,

Defendants.

Opinion and Judgment of District Court June 20, 1972

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COOLAHAN, Chief Judge:

This is an action to determine whether defendant American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter "AFSCME" or "International"), acting by defendant President Jerry Wurf, lawfully placed plaintiff New Jersey Public and Civil Servants Employees, Local 1959 of AFSCME (hereinafter "Local 1959") in trusteeship and appointed defendant Louis Kaplan trustee in accordance with the requirements of the AFSCME Constitution as well as Section 302 of the Labor-Management Reporting and Disclosure Act of 1959 (popularly known as the Landrum-Griffin Act), 29 U.S.C. §462.

Prior to 1968 New Jersey's various municipal and county employees were not unionized. Many such employees belonged to the New Jersey Civil Service Association, but this organization did not engage in collective bargaining on behalf of its membership. Collective bargaining rights were not won by New Jersey public employees until passage of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A (eff. July 1, 1968). With legislative enactment imminent, plaintiff Robert Murphy, serving then as President of the Civil Service Association, took steps in late 1967 to secure union representation for all public employees in Hudson County, New Jersey. Subsequent to his discussions in December 1967 with defendant Jerry Wurf, President of AFSCME, the Hudson County members of the Civil Service Association voted to affiliate with AFSCME.

In January 1968 the newly formed union adopted the name "New Jersey Public and Civil Servants Employees, Local 1959, American Federation of State, County and Municipal Employees, AFL-CIO." Plaintiffs Robert Murphy and Rita Furniss were appointed provisional President and Secretary-Treasurer, respectively, by AFSCME President Jerry Wurf at that time. The charter which Local 1959 received from the International in March 1968 ceded the local jurisdiction over all Hudson County public employees. At its inception Local 1959 had approximately 2,000 members, most of whom had been members of the old Civil Service Association. For administrative purposes Local 1959 was broken down into 17 chapters,[1] none of which was autonomous, with each chapter composed of workers from a district working unit.

Local 1959 adopted and ratified its own constitution on March 29, 1971, a copy of which was sent to the International and received there on May 28, 1971.[2]

As a fledgling union, Local 1959 suffered from financial pressures and administrative inexperience which led to an informal but not truly undemocratic administration of union business. At the first meeting of Local 1959 for the nomination of officers, on July 11, 1971 the provisional officers were the only nominees. As such, they were then

[1] Chapters elect no officers other than a chapter chairman, who serves only as link to the local and never as a direct representative to the International. Chapters are unchartered and have neither a constitution nor an independent source of funds.

[2] During the interim between the chartering of a local union and the International's approval of its proposed constitution, the model constitution for local unions contained in the AFSCME Constitution governs the local. In fact, it appears that the International never approved the proposed constitution submitted by Local 1959. Both the International model constitution and the constitution submitted by Local 1959 are, however, substantially the same.

entitled to be declared elected, according to parliamentary rules of procedure as well as the AFSCME Election Code, Section 2(D). However, notice of the nomination of the July 11th meeting was not in strict compliance with AFSCME Election Code, Section 2(d), which requires that notice of nominations be mailed to each union member at his last known address at least 15 days prior to the taking of nominations. The AFSCME Election Code requirement is more stringent than its counterpart in the Landrum-Griffin Act, Section 401(e), 29 U.S.C. §481(e), which simply requires that a "reasonable opportunity" be given for the nomination of candidates. In order to save $240 in mailing costs, notice of the nomination meeting was given via flyers, posters, word of mouth, and a small advertisement in a Hudson County newspaper taken out two days before the meeting. More important, at the time of his election as President of Local 1959, Robert Murphy had retired from his civil service job with Jersey City, having gone on pension in May 1970. Both the AFSCME Constitution, Art. III, Sec. 2(C) and the AFSCME model constitution for local unions, Art. VI, Section 3, declare retirees ineligible for elective office in any local union, council, or the International.[3] Therefore, on July 11, 1971, Murphy was ineligible for the president of Local 1959. As we shall see, the International would later turn to this discrepancy to justify the imposition of its trusteeship over Local 1959.[4]

[3] After Murphy retired in May 1970 his union dues check-off naturally ceased. Not until April 1971 did Murphy pay the dues he had missed in the interim, which were due monthly in advance. The AFSCME model constitution for local unions, Art. IV, §4, states that any member failing to pay dues for two successive months stands suspended, and further states Art. VI, §3, that candidates must be members in good standing for one year immediately preceding the election.

[4] The International also cites the failure of Local 1959 to keep adequate minutes and to make periodic financial reports to its membership. It appears

Real antagonism between Local 1959 and its parent International, however, did not develop until the late months of 1971. At the vortex of the ensuing controversy was the appointment by the International of Louis Kaplan to serve as Area Director of New Jersey in June 1971.[5] Kaplan's appointment was at least in part prompted by the administrative and financial disorganization of AFSCME at all levels within New Jersey at this time. From their inception, all New Jersey AFSCME locals had been affiliated with a state-wide AFSCME organization known as Council No. 1, whose purpose was to service affiliated locals by supplying organizers, staff and legal assistants. Despite the fact that the membership of Local 1959 constituted more than one-third of the membership of all the locals affiliated with Council No. 1 during the summer of 1971, legal assistance was not furnished and administrative assistance was offered only sporadically. Judged in the context of Local 1959's dues structure, the situation by June 1971 had become patently unfair. At that time the Local's share of a member's $4.00 monthly dues had dropped from $3.00 to $.50. Council No. 1 received $2.00 and the International was payed the remaining $1.50.

As a result of widespread dissatisfaction with Council No. 1, Kaplan, acting on behalf of the International, plan-

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that minutes were in fact taken, but were irregularly written up by the recording secretary. Local 1959's cash book had been audited by the International on June 8, 1971 and found correct. Although there is no evidence of periodic financial reports, as required by AFSCME Constitution, Bill of Rights §5, an audit report as well as any other pertinent financial information was presumably available upon demand. Technical breaches of parliamentary order or the AFSCME Constitution such as these are obviously attributable to the informality of the Local's administration, an informality itself a product of the membership's trust in its Local's leadership rather than a conscious effort on the part of that leadership to run afoul of democratic procedure.

[5] At that time defendant Charles Keller was already serving as the International representative for an area which included Hudson County, but following Kaplan's appointment, Keller became his subordinate.

ned to restructure the AFSCME organization in New Jersey. Toward that end a Convention was held during the last five days of October 1971. The general delegate body, representing locals throughout New Jersey, unanimously adopted the restructuring plan engineered by Kaplan. Under the new plan there existed four regional councils, which were to service affiliated locals in their respective areas, a state-wide council for State employees, and a state-wide Council No. 1, with which the regional councils would affiliate. One of the regional councils was Council No. 61, which was to service Hudson, Bergen and Union Counties. At the time of the Convention, AFSCME had only one local in Bergen County, with about 65 members, and one in Union County, with about nine members so that Local 1959 of Hudson County, with over 2,000 members, would clearly dominate Council No. 61 affairs. It was anticipated, however, that the seventeen chapters of Local 1959 would be chartered as locals by the International and affiliate with Council No. 61, bringing its total number of affiliate locals to nineteen.

The International submitted a draft constitution for Council No. 61 to the Council's delegates during the Convention. The delegates rejected the draft and adopted a slightly different constitution. Although the Convention adjourned on October 31, 1971, copies of the proposed Council No. 61 constitution were not mailed to the International until December and apparently were not received until hand delivered by Murphy to International representative Al Bilik on January 11, 1972. The final act of the Council No. 61 delegates prior to adjournment was the election of officers, who were sworn into office by Kaplan. Plaintiff Frank Bassilo was elected President, while Murphy was elected Executive Director. Murphy, as we have seen, was ineligible for elective office at any level of the

AFSCME organization, after his retirement in May 1970, and for that matter, so was his opponent, Keller, who was not a member of any of the locals constituting Council No. 61, as required by the AFSCME Election Code, Section 2(A).

At this juncture there developed some confusion as to who would take the proper procedural initiative to secure a charter for the newly created Council No. 61. Kaplan announced at the end of the Convention that he would forward charters to the new councils. Upon approval of submitted constitutions with minor changes, President Jerry Wurf issued charters [6] to five of the six councils proposed by the October Convention.[7] In early January 1972, the International Executive Board ratified the President's issuance of those charters and also authorized the issuance of a charter to Council No. 61 at the President's discretion. For his part, Wurf was apparently unwilling to issue a charter until submission and approval of a constitution for Council No. 61, which, as we have seen, was not received by the International until mid-January 1972. The constitution of a council defines the manner in which locals affiliate with it, and, as the International points out, "[g]rave and possibly ineradicable problems could arise should the council be granted its indicia of authority without clear definition of the terms on which the authority is granted.[8]" Just the same, nothing in the AFSCME Con-

[6] Under AFSCME Constitution, Article V, Section 13, the International President has power to issue charters to any council, subject to the approval of the International Executive Board. The Board may order the issuance of a charger on its own, but as a matter of practice, this is unlikely.

[7] Although no formal application had come from Convention delegates the International assumed that the action taken by the delegates in October was sufficient to warrant issuance of a charter to those councils submitting proposed constitutions.

[8] Unlike the AFSCME model constiution for local unions, the AFSCME model constiution for councils is not incorporated into the AFSCME Con-

stitution makes adoption and International approval of a constitution prerequisite to the issuance of a local or council charter. It is simply a policy matter.

To date the proposed constitution for Council No. 61 has not been acted upon by the International President. The International now argues that it is unacceptable because it provides for direct membership on the part of Hudson, Bergen, and Union County employees of county and municipal government and thus contravenes AFSCME Constitution, Art. IX, Section 13, which states that councils are to be composed of locals, not individuals. Indeed, it is eminently clear from the constitutional scheme of AFSCME that only locals are intended as direct membership bodies, while councils are intended strictly as servicing units to which locals or other councils affiliate. Also, the proposed constitution for Council No. 61 purports to set a per capita tax out of which Council No. 1 (the statewide council) will receive a set amount. By attempting to regulate the manner in which its locals would relate to Council No. 1, Council No. 61 would have usurped the power of Council No. 1 to set its own per capita tax pursuant to AFSCME Constitution Art. IX, Section 14.[9]

If a charter is issued to a council by the International without there first being a constitution in effect, it can only be because the International recognizes the council

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stitution and is therefore not binding upon a chartered council during the period in which the council would compose and submit its constitution for approval by the International President, as would otherwise be the case with respect to a newly created local.

[9] The International also questions the provision of the proposed constitution for Council No. 61 by which the Council mandates that all locals within its three-county jurisdiction affiliate with it. On the contrary, that provision simply restates the same mandatory affiliation requirement set out by the AFSCME Constitution, Art. IX, §16, and does not derogate from the discretion of the International Executive Board under that section to excuse a local from its affiliatory duty.

as a viable organization, in plain words, as being able to do its work. It is hard to understand how the International could deny Council No. 61's viability. Because Council No. 61 was composed of only three locals, the overwhelming constituency of which were members of Local 1959, Council No. 61 and Local 1959 were virtually synonomous in purpose and membership composition. The organizations shared identical leadership. In reality, the servicing functions of Council No. 61 merged imperceptively with collective bargaining and representation functions of Local 1959 so that after the October 1971 Convention, a hybird organization was performing both functions. The widespread recognition in and out of the AFSCME organization,[10] while unable to effect creation of Council No. 61 in the absence of a charter grant, nonetheless attests to the viability of Council No. 61. Also, Local 1959 had earlier retained counsel to compensate for the total lack of legal assistance from old Council No. 1, and Council No. 61 was therefore in a position to provide such legal assistance to its affiliate locals. Council No. 61 continued to use the cashbook of Local 1959, and Council No. 61 tendered $1304.75 in per capita due to Council No. 1 before imposition of the trusteeship in January 1972 foreclosed further payments. As we shall see, it was not so much Council No. 61's vitality as a servicing agent as its debatable proficiency in local business matters which would arouse the top level of AFSCME to action.

Council No. 61 immediately took over the collective bargaining duties of Local 1959, but to avoid confusion of identity it retained its old name during representation

[10] The New Jersey AFSCME newsletter "Beacon", for example, lists the councils created by the October Convention restructuring on its masthead. Numerous communications from Kaplan, AFSCME headquarters, and the New Jersey Public Employees Relations Commission refer frequently to Council No. 61 rather than Local 1959.

elections. On December 14, 1971 Local 1959 lost a crucial election in Hudson County to the Teamsters, involving some 2,000 county hospital, garage and administrative staff workers. The AFSCME campaign was fought with Kaplan at the helm, who, contrary to the advice of Murphy, interjected into the representation election the charge that the Teamsters were controlled by Hudson County politicians and elected officials. AFSCME lost the election by several hundred votes, but Kaplan had the full support of the International in seeking to file objections to the election on the basis of certain alleged improprieties. Murphy, however, refused to sign an election protest, partly because he thought that AFSCME had lost by such a wide margin that objections, even if sustained, could not overturn the result. More important, Murphy believed that Hudson County was in such dire financial straits that the Teamsters would be unable to negotiate a raise for their newly won membership, and that the better strategy would be to wait awhile for dissatisfaction with the Teamsters to set in and then petition for another representation election.

Unappeased by what it considered a reckless tactic, the International resolved to challenge the December election in its own name. Kaplan filed AFSCME's protest notwithstanding the advice of Murphy and the Council No. 61 Executive Board to the contrary. However, the Teamsters successfully moved to dismiss the AFSCME challenge on the ground that it was not a party to the proceedings before the New Jersey Public Employee Commission (PERC), which oversees such elections. The International was even less pleased to hear that on December 20, 1971 Murphy, with the authorization of the Executive Board of Council No. 61, had given the Hudson County Board of Freeholders written notice to cease payroll de-

ductions for those employees AFSCME no longer represented as a result of its election loss. It was not until January 11, 1972 during a Washington meeting between Murphy and International representative Al Bilik that the International first learned of the purported termination of dues check-off by Council No. 61.[11] Bilik regarded the attempted stoppage as a severe blow to union solidarity, as it came when the International was in the midst of perfecting its appeal to PERC, still hoping to upset the election. Concluding that the International and Council No. 61 had become intolerably divided as to the representation election strategem, Bilik recommeded that President Wurf place Council No. 61 under trusteeship "in order to carry on effectively our duty to represent the members." Accordingly on January 12, 1972 Wurf appointed Kaplan trustee of Council No. 61 (or, as referred to in the trusteeship notice, Local 1959), citing as justification three grounds enumerated in the AFSCME Constitution, Art. IX, Section 25, namely, that "dissolution or secession of the Local is threatened, dissipation or loss of the funds of the Local is threatened and the Local is acting in violation of the Constitution."

Running parallel in time to this fracas was the effort by Kaplan, undoubtedly with the acquiesence of the International hierachy, to autonomize the chapters of Local 1959. On December 22, 1971 Kaplan telegrammed the mayor of Bayonne that the officers of Local 1959 had been supplanted by Keller and the Bayonne chapter chairman, and that dues were to be paid to the Bayonne Chapter of AFSCME. A week later a similar letter was sent to

[11] Only a union member has the right to end the dues check-off. Murphy's letter was entirely without legal effect. Further, owing to later developments, the dues would be held in escrow pending the outcome of the well-publicized dispute, in and out of court, between Council No. 61 and the International.

the Bayonne Business Administrator. And on December 23, 1971 Kaplan telegrammed the mayor of Union City to the same effect with regard to the Union City chapter of AFSCME. On January 6 and 10, 1972 Kaplan informed various Jersey City officials that they were to deal directly with the International and ignore the officers of Local 1959, who Kaplan said were no longer authorized to represent AFSCME, and that all dues were to be sent to Kaplan's office in Trenton. Prior to the installation of the trustee, Kaplan had told Murphy, the Secretary-Treasurer and attorney for Council No. 61 that they were "out". Nowhere does the AFSCME Constitution authorize the International, let alone a field representative to oust the officers of subordinate bodies except by trusteeship. Apparently, Kaplan attempted this scheme on the theory that emergent circumstances or alleged constitutional violations on the part of Council No. 61 required such action.

Council No. 61 resolved to put an end to what it regarded as meddling by Kaplan and the International. On January 13, 1972, obviously before receipt or knowledge of the notice of trusteeship signed by Wurf the day before, Council No. 61 brought suit on an order to show cause in the Superior Court of New Jersey, Chancery Division, Hudson County, to enjoin AFSCME and its agents from interfereing with its operations. In light of the imposition of the trusteeship, the court determined that justice would best be served by dismissing the complaint without prejudice so that the plaintiffs could pursue federal or administrative remedies.[12]

[12] An order vacating the interim restraints and dismissing the action was entered on January 27, 1972, but the vacating decree was stayed first until January 29 and then January 31, 1972 for the obvious purpose of permitting plaintiffs sufficient time to bring a federal action without irreparable harm occurring in the meantime.

On January 31, 1972 plaintiffs filed suit in this Court alleging virtually the same cause of action as in the state action but adding a cause of action challenging the validity of the trusteeship. The Court issued an interim order on February 1, 1972 restraining all parties from carrying on regular union functions affecting the membership of Council No. 61 or Local 1959. On March 14, 1972 during the pendency of the sixteen day hearing on this matter, the Court issued a superceding order which enlarged those restraints to preserve the status quo in this case, to wit, the International was enjoined from any action which might affect the economic or political integrity of Council No. 61 or Local 1959. It appeared to the Court at that time that the International was engaged in flurry of activity, namely, the chartering of Local 1959's chapters, which might seriously prejudice whatever relief to which Local 1959 or Council No. 61 may prove to be entitled. However, the entry of that order and preceding interim restraints were voided by the Third Circuit Court of Appeals on April 4, 1972 because of the time limitation upon such interim relief set out in Rule 65(b), F. Rules Civ. P. and because this Court had made no finding of facts such as would justify the issuance of preliminary injunction. Rules 52(a), 65(a), F. Rules Civ. P. After a full review of the pleadings, transcripts, exhibits and briefs, the Court is of the opinion that judgment must be entered in favor of the plaintiffs. Preliminarily, the Court addresses itself to the defenses of res judicata, failure to exhaust administrative and intraunion remedies, and lack of subject matter jurisdiction.

I.

RES JUDICATA

The defense of res judicata anticipates the defense of failure to exhaust intraunion remedies, a defense which defendants contend was sustained by the Superior Court in its dismissal of the state action between these same parties on January 27, 1972 and therefore is binding on this Court. The complaint filed by plaintiffs in the state court action is virtually identical to the one filed in the subsequent federal lawsuit. When plaintiffs prepared and filed their complaint with the Superior Court in Hudson County, they did so unaware that a trusteeship had been imposed on Local 1959 that very day. The complaint initially contained a single cause of action based upon the alleged failure of the International to respect the right of Local 1959 and Council No. 61 as set forth by the AFSCME Constitution, which, of course, was a contract or compact between those parties and legally enforceable. This was a common law cause of action which the Superior Court was competent to entertain. A review of the transcript of that court's proceedings as well as its January 27th order reveals that the Superior Court concluded that plaintiffs must exhaust administrative remedies with regard to its first cause of action.

Subsequent to its initial filing but before entry of the order of dismissal, plaintiffs amended their complaint to include a challenge to the newly discovered trusteeeship, relying upon Section 302 of the Landrum-Griffin Act, 29 U.S.C. §462. However, only United States district courts have jurisdiction to hear a challenge to a trusteeship brought pursuant to the Landrum-Griffin Act. It is obvious that the Superior Court realized its jurisdictional

limitations, and, after considering the state of the pleadings, left plaintiffs with two alternatives: exhaust administrative remedies and return to state court under the first cause of action, or pursue whatever relief may be available in federal courts. Assuming that plaintiffs would want to opt for the second alternative, the court dismissed the complaint without prejudice [13] and stayed the vacation of its interim decrees so that plaintiffs would be able to secure a federal restraining order without lapse in the protection of the status quo.[14] Therefore, the defense of res judicata must be sustained as to the first cause of action but not the second.

II

FAILURE TO EXHAUST INTRAUNION AND ADMINSTRATIVE REMEDIES

Section 304 of the Act, 29 U.S.C. §464, empowers any member or subordinate of a labor organization to allege before the Secretary of Labor that a trusteeship has been improperly imposed or that the trustee has exceeded his powers. If, upon investigation, the Secretary concludes that there is probable cause to believe that a violation has occurred and has not been remedied, he is obliged to

[13] The words "without prejudice" appear in both the order of dismissal and the order of modification staying the vacation of restraints until January 31, 1971. The Court assumes that the Superior Court meant that the dismissal was without prejudice to an action in federal court as to the trusteeship cause of action, and without prejudice to reinstitution of the common law cause of action once administrative remedies had in fact been exhausted.

[14] Indeed, had the Superior Court purported to rule on the federal aspect of the amended complaint, its order would have to be disregarded as void and without res judicata effect because state courts do not share jurisdiction coextensively with federal courts under Section 304 of the Act, 29 U.S.C. §464. A judgment from a court of incompetent jurisdiction is not ordinarily entitled to a res judicata effect. D'Addino v. Dulles, 136 F. Supp. 417 (E.D.N.Y. 1954).

bring an action in a United States district court for appropriate relief. Alternatively, Section 304 provides that any member or subordinate body of a labor organization affected by a violation may bring an action for such relief in a district court upon plaintiff's own initiative. Numerous courts have found, therefore, that the plain language and purpose of the Act refute any reading of Section 304 which would limit the alternative of private litigation to supplementary or secondary relief. Accordingly, these courts have held that local unions and their members need not exhaust the administrative remedy provided by the Act before an action is brought against the parent body in federal court. United Brotherhood of Carpenters and Joiners v. Brown, 343 F.2d 872 (10th Cir. 1965); Weihrauch v. Electrical, Radio and Machine Workers Union, 272 F. Supp. 472 (D. N.J. 1967); Schonfeld v. Raftery, 271 F. Supp. 128 (S.D.N.Y.), aff'd, 381 F.2d 446 (2d Cir. 1967); Executive Board, Local Union No. 28 v. I.B.E.W., 184 F. Supp. 649 (D. Md. 1960).[15]

A requirement of intraunion exhaustion of remedies would gravely impair the legislative scheme under trusteeship provisions of the Act. There can be little doubt that Congress was firmly determined to curb the power of a parent national or international labor union to impose a trusteeship upon a local.[16] Quite notably, exhaustion of

[15] These more recent decisions have unanimously repudiated earlier precedents to the contrary. Cox v. Hutcheson, 204 F. Supp. 442 (S.D. Ind. 1962); Flaherty v. McDonald, 183 F. Supp. 300 (S.D. Cal. 1960); Rizzo v. Almond, 182 F. Supp. 456 (D. N.J. 1960).

[16] Despite its belief that trusteeships are valid instruments to prevent subversion, corruption and financial mismanagement, Congress was entirely familiar with the train of abuses attendant to union trusteeships. Hearings before the McClellan committee revealed that "in some instances trusteeships have been used as a means of consolidating the power of corrupt union officers, plundering and dissipating the resources of local unions, and preventing the growth of competing political elements within the organization."

the internal grievance machinery is demanded of complaints in matters concerning Title I of the Act, which sets out the union member's bill of rights.[17] The omission of a similar requirement from Title III, the trusteeship provisions, was not an error or oversight in draftsmanship, but was instead a conscious recognition of the grievous injury which may be inflicted upon a local union during even a relatively short period if the local is at the mercy of a corrupt or usurpative parent body. Moreover, there is the practical consideration that it would be futile, if not foolhardy, for the local to protest the unlawful seizure of its autonomy to the very ones responsible if a malicious motive be present. Considering the potential for abusing the use of trusteeships and the fruitlessness of objections thereto in substantially numerous cases, courts have not read a requirement of exhausting intraunion procedures into Section 304 of the Act, 29 U.S.C. §464. See United Brotherhood of Carpenters and Joiners v. Brown, supra; Benish v. Retail Clerks International Association, Civil Action No. 67-472, 67 L.R.R.M. 2601 (D. Ore. 1968).

III

SUBJECT MATTER JURISDICTION

The International contends that Local 1959 is outside the remedial coverage of the Landrum-Griffin Act because it is not a "labor organization" as defined by Section 3(i),

S. Rep. No. 187, 86th Cong., 1st Sess. (1959), cited in 2 U.S. Code Cong. & Adm. News 2318, 2333 (1959). Neither the Senate nor the House bill provided for exhaustion of intraunion remedies, nor did either reporting committee discuss such a proviso.

[17] A union member alleging a violation of Title I must exhaust "reasonable hearing procedures" within his union not to exceed a four month period of deliberation. §101(a)(4) of the Act, 29 U.S.C. §411(a)(4).

29 U.S.C. §402(i). However, Section 304(a), 29 U.S.C. §464(a) provides that "[a]ny member or subordinate body of a labor organization" having a grievance resulting from the imposition of a trusteeship may bring an action in federal court. There is no requirement in Title III actions that the plaintiff be a labor organization as defined by Section 3(i), 29 U.S.C. §402(i), as, indeed, such would be impossible in the case of an individual plaintiff. Therefore, plaintiff need show only that the International is a labor organization within the meaning of the Act.

To fall within the definition of labor organization under Section 3(i), 29 U.S.C. §402(i), a body must be one which engages in an industry affecting interstate commerce and represents employees in their negotiations with their employers with regard to any of the terms or conditions of employment normally the subject of collective bargaining. "Employer", as defined in Section 3(e), 29 U.S.C. §402(e), however, specifically excludes the United States or any corporation wholly owned by the United States or any state or political subdivision thereof.[18] Public employees compose most of APSCME's locals, but the International concedes that it has chartered locals which do not represent public employees exclusively. Where a parent national or international has chartered a local which negotiates by collective bargaining with a non-public employer engaged in an industry affecting interstate commerce, the parent body is a labor organization within the meaning of Section 3(i), 29 U.S.C. §402(i), even though public employee locals predominate the parent and despite the overwhelmingly public membership of a given mixed local.

[18] As the charter of 1959 limits that local to the representation of public employees of Hudson County, New Jersey, it is not a labor organization as defined by Section 3(e), (i), 29 U.S.C. §402(e), (i). But, as we have seen, this is irrelevant to the Court's jurisdiction.

This interpretation is consistent with the policy of the Secretary of Labor to construe the Act to afford coverage to all labor organizations except those which are clearly beyond its scope.[19] 29 C.F.R. §451.2 (rev. 1971). It is also consistent with the coverage requirement of effect upon interstate commerce. Under Section 3(j)(3), 29 U.S.C. §402(j)(3), an organization is deemed to be engaged in an industry affecting interstate commerce if it has chartered a local union or subsidiary body which is representing or actively seeking to represent employees under the provisions of the National Labor Relations Act. The Secretary has interpreted this section to mean that

> . . . a labor organization not otherwise subject to the Act, such as one composes of Government employees, would appear to be "engaged in an industry effecting

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[19] As to the "employer" requirement of §3(e), 29 U.S.C. §402(e), the Secretary has ruled:

> In defining "employer", section 3(e) expressly excludes the "United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof." The term "political subdivision" includes, among others, counties and municipal governments. A labor organization composed entirely of employees of the governmental entities excluded by section 3(e) would not be a labor organization for the purposes of the Act. However, in the case of a national or international labor organization composed of both government locals and non-government or mixed locals, the parent organization as well as its mixed and non-government locals would be "labor organizations" and subject to the Act. . . .

29 C.F.R. §451.3(a)(4) (rev. 1971). Elsewhere the Secretary has commented:

> A national or international union whose membership consists predominantly of employees of governmental agencies is nevertheless a labor organization within the meaning of the Act if *any* of its locals represents members who are not employed by State or other governmental instrumentalities.

Office of Labor-Management and Welfare Pension Reports, U.S. Dep't. of Labor, LMRDA Interpretative Manual §030.636 (undated) (emphasis in original).

> commerce" and, therefore, subject to the Act if it charters one or more local labor organizations which deal with an "employer" [§3(e), 29 U.S.C. §402(e)]. This category includes among others, a federation of national or international organizations which directly charters local bodies.

29 U.S.C. §451.4(d) (rev. 1971) (footnote omitted). The congressional mandate for such a sweeping classification is evident not only on the face of the Landrum-Griffin Act, but auso in the legislative history. H.R. Report No. 741, 86th Cong., 1st Sess. (1959), cited in 2 U.S. Code Cong. & Adm. News 2424, 2451 (1959). Following the guidelines enunciated by the Secretary, which the Court believes correctly guage the intent of the Act, the defendant International is a labor organization within the meaning of subsections 3(e), (i), (j)(3) of the Act, 29 U.S.C. §402 (e), (i), (j) (3) and therefore suable under Section 304, 29 U.S.C. §464.

IV.

THE TRUSTEESHIP'S PRESUMPTION OF VALIDITY

In granting jurisdiction to federal courts to determine the validity of union trusteeships, Congress chose to limit the discretion of courts in upsetting trusteeships by establishinga presumption in favor of their validity. Where the international imposes a trusteeship in conformity with the procedural requirements of its own constitution and authorizes or ratifies the trusteeship by a fair hearing, the trusteeship is presumed valid for eighteen months from its initiation. During that time, the trusteeship is not subject to attack except upon clear and convincing proof that it was

not established or maintained in good faith and for a purpose allowable under the Act.[20]

The trusteed plaintiff may, however, destroy the presumption by proving the failure of the international to follow its constitutional procedure for installing a trustee or the failure to afford the trusteed subordinate body a fair hearing consistent with reasonable expectations of due process. While courts are to be wary of the "forms of fair procedure," the presumption exists so that courts will not substitute their judgment for that of the parent body except when such judgment is abusive or corrupt. Thus, "an honest decision by the international officials is not to be overturned . . . upon a qeustion of fact or of degree of judgment as to the necessity for imposing [a trusteeship]." House Rep. 741, 8th Cong., 1st Sess. (1959), cited in 2 U.S. Code Cong. & Adm. News 2424, 2436 (1959). Once it is decided that the international has abided by its constitution and granted a fair hearing on the validity of the trusteeship, the statutory presumption operates both legally and factually: the purpose for which the trusteeship was implemented is presumed legal, and the facts which would justify the implementation for the stated purpose are presumed to exist. See Luggage Workers Union v. International Leather Goods, Plastic & Novelty Workers' Union, 316 F. Supp. 500 (D. Del. 1970).

[20] Section 304(c), 29 U.S.C. §464(c) states:

> In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title. . . .

Should the trusteed plaintiff successfully convince the court either that the international violated its constitution in imposing the trusteeship or thereafter failed to grant a fair hearing as to its lawful necessity, the minimum consequence is that the presumption upholding the trusteeship disappears. I.B.E.W. Local 1186 v. Eli, 370 F. Supp. 495 (D. Hawaii 1969). Other courts have held that the legislative policy of Title III favoring independent, internal resolution of these matters where possible is best served by an absolute requirement of due process. Thus, failure to adhere to the international constitution or to hold a fair hearing would invalidate the trusteeship, rather than simply change the procedural posture of the case. Jolly v. Gorman, 428 F.2d 960 (5th Cir. 1970), cert. denied, 400 U.S. 1023 (1971); Luggage Workers Union v. International Leather Goods, Plastics & Novelty Workers' Union, supra; Plentty v. Laborers' International Union, 302 F. Supp. 332 (E.D. Pa. 1969); Local No. 2, International Brotherhood of Telephone Workers v. International Brotherhood of Telephone Workers, 261 F. Supp. 433 (D. Mass. 1966). Both the intent of Congress and the logic of requiring a hearing at all strongly support the rule that due process in the imposition of a trusteeship is essential and not just procedurally normative.

Without authoritatively exhausting the prerequisites, any attempt by an international to comply with due process at the trusteeship hearing would certainly include such elementary features as the right to have representation by retained counsel, the right to cross-examine, and a compulsory process for obtaining testimony of union witnesses. Perhaps most important as a practical matter is the right to be apprised of the exact nature of the charges against the trusteed subordinate which prompted the trusteeship. Such notice is critical when one realizes that because of

the trusteeship procedure, the true defendant is obliged to wear the plaintiff's hat should the local decide to challenge the trusteeship in federal court. If the federal hearing, as in this case, precedes the union hearing, the need for adequate and timely notice is doubly compelling. The trusteed subordinate must have a working knowledge of the purported basis of the trusteeship in order to understand how to proceed at the hearing. Otherwise, the local has the burden of disproving an unstated premise.

In the Luggage Workers Union case, supra, the court invalidated a trusteeship for failure to observe minimum notice requirements. While the court recognized a reasonable distinction between judicial and administrative trial amenities, it ruled that the international failed to meet the barest notice requirements in implementing its trusteeship. Said the court:

> [T]he right to a fair hearing implies more than an opportunity to be heard before an official body. It includes written charges and fair notice of the hearing so that the Local can prepare its defenses. The charges must state the acts upon which the International relies, the manner in which they violate the constitution or otherwise justify the trusteeship, and whenever possible, the persons who committed them. Vague references to constitutional violations or misconduct are not adequate.

Id. at 508 (footnote omitted). See also Local No. 2, International Brotherhood of Telephone Workers v. International Brotherhood of Telephone Workers, supra.

If this test for adequate notice were strictly applied to the notice of trusteeship mailed by AFSCME President Wurf, the notice is, quite obviously, fundamentally defec-

tive. It abides the very evil disallowed by the Luggage Workers court in that it simply recites three grounds for the imposition of a trusteeship listed in the AFSCME Constitution, Art. IX, Section 25, namely, that dissolution or secession of the Local is threatened, dissipation or loss of the Local's assets is threatened, and the Local is violating the AFSCME Constitution. A more comprehensive and less enlightening series of allegations could hardly be drafted.

On the other hand, the International should not be expected to draft its charges with the specificity of a criminal indictment. I.B.E.W. Local 1186 v. Eli, supra. The issue of adequate notice must be evamined practically within the context of the ongoing relationship between the parent and subordinate trusteed bodies. Where several months of heated dispute precedes the implementation of trusteeship. It would often be foolish to expect highly formalized notice to crystallize or clarify the differences which set the trusteeship machinery in motion. It will always be necessary to examine the alleged bases for the trusteeship and the history of the parties directly prior to the trusteeship in order to decide if adequate notice of the reasons for the trusteeship has been given. Luggage Workers Union v. International Leather Goods, Plastics & Novelty Workers' Union, supra, at 508 n. 17.

The International now contends that the following improprieties (whether cumulatively or individually, it is not clear) either justified the imposition of a trusteeship or presently justifies its maintenance: (1) failure to give adequate notice of the July 11, 1971 nomination and election of the Local 1959 officers; (2) ineligibility of Robert Murphy for the presidency of Local 1959; (3) failure to call or conduct regular or frequent meetings of the mem-

bership; (4) failure to keep minutes of either the membership or executive Board meetings; (5) failure to give the membership a full and clear accounting of union funds; (6) breach of fiduciary duty by withholding knowledge of Murphy's ineligibility; (7) submission of a knowingly unconstitutional form of constitution for Council No. 61 so as to prevent International approval thereof and issuance of a charter; and most important, (8) refusal to take objections to the Teamster victory in the December 14, 1971 Hudson County election, concommitant with the purported revocation of dues check-off by Murphy at the time at which the International was attempting to perfect its appeal to PERC.

Looking to the history of Local 1959 and Council No. 61 in the months immediately preceding the trusteeship instituted on January 12, 1972, the Court finds not the smallest shred of evidence from which one might conclude that the International raised or maintained any objections whatsoever as to alleged improper or undemocratic administrative and election procedures on the part of Local 1959 or Council No. 61, which, indeed, appear to be at least a substantial thrust of the International's position now. Not a simple proffered witness or document would attest to such a complaint's existence or communication to Local 1959 or Council No. 61. Certainly, the very brief and informal inquiries by Kaplan into such matters as the keeping of minutes or the publication of fiscal reports alone would never have given Local 1959 or Council No. 61 a reasonable indication that the International was contemplating a trusteeship to restore proper procedures.

Similarly, as to the submission of an unacceptable form of constitution, Council No. 61 as a de facto organization, could never have realized that this alone would prompt

the International to appoint a trustee, since it is clear that a subordinate body may be granted a charter without first having its proposed constitution approved, because existence of a constitution is only a single factor in determining the viability and hence charterability of a subordinate body. More important, the offensive language of the proposed constitution could have been stricken with the stroke of the pen and resubmitted to Council No. 61 for ratification. Surely, no one envisioned so radical an action as imposing a trusteeship for simple tardiness in submitting a mildly nonconforming constitution.

The justifications listed in the notice of trusteeship really boil down to a single grievance, namely, Council No. 61's alleged mismanagement of the Hudson County election on December 14, 1971. The proof here as to proper notice is a closer question, but it appears that the notice given was likewise insufficient. Council No. 61, as we have seen, had lost a county-wide election resulting in the loss of 800 dues-paying members it had formerly represented and an additional 1200 or so more AFSCME and Council No. 61 would have picked up had AFSCME won the election. The 800 member loss amounted to roughly one-third of the membership of Council No. 61 at the time, so it takes little imagination to understand why the International equated the actions of Council No. 61 after the election, failing to file colorable objections and attempting to terminate dues check-off, with dissolution of Council No. 61 and dissipation of its assets.

Nonetheless, the notice of trusteeship is ambiguous even interpreted, as it should, to pertain to nothing more than the Hudson County election loss. A number of theories could be drawn from the language of the notice, for example: (1) the International had determined that the loss of a major representation election was equivalent to a

dissolution or threat of dissolution of Council No. 61 and dissipation of its funds; (2) Murphy's letter to the Hudson County Board of Freeholders purporting to stop the dues check-off amounted to a dissipation of funds; (3) the refusal of Council No. 61 to file objections to the election was similarly equivalent to a dissolution or threat of dissolution and dissipation of funds; (4) the Teamster victory was irretrievable, but Council No. 61 had conducted itself so irresponsibly during the election and thereafter that only a change of leadership could revitalize the organization and prevent further loss of membership and money. Despite attempts by counsel for Council No. 61 to pin the International down to its theory or theories of trusteeship, it was not until the midst of this trial that it became clear that the International placed little or no reliance upon the theories numbered (1) and (4) above.

Due process requires that the International cannot level sweeping accusations in the hopes of conforming them to the swing and sway of proof and whatever statutory justification the allegations might later attach themselves to most comfortably at trial. To approve this trusteeship on the basis of charges of undemocratic procedure or administrative malfunctioning would be to condone a fishing expedition of the most obvious and pernicious sort. Judicial ratification of the trusteeship, while proper in most cases involving a degree of judgment as to the necessity for a trusteeship, cannot be based upon what the trustee discovered rather than what he undertook to remedy without radically subverting the trusteed subordinate's due process right of adequate and timely notice. Similarly, to approve the trusteeship on the basis of alleged mismanagement of post-election affairs would be to reward the International for its scattershot tactics, again abusing Council No. 61's right to adequate and timely notice of the exact charges against it.

V.

THE PURPOSE OF THE TRUSTEESHIP.

While it is clear that the trusteeship must be dissolved for want of proper notice, the Court believes it should comment on the substantive rights of the International in imposing this trusteeship.[21]

Section 302 of the Landrum-Griffin Act, 29 U.S.C. §462 provides three explicit purposes for establishing a trusteeship over a subordinate body: the correction of corruption or financial malpractice, assurance of the performance of collective bargaining agreements or other duties of the bargaining representative, and restoration of democratic procedures. None of these purposes have even a colorable application to the trusteeship in this case. However, Congress added a catch-all clause so as not to upset trusteeships which were implemented for "otherwise carrying out the legitimate objects" of the subordinate body. Since the trusteeship provisions of the Act were intended to preserve the integrity and stability of local unions, Congress declined to enumerate in detail all permissible purposes because it feared that elaborate, rigid standards would restrict international intervention when fully justified. House Rep. 741, 86th Cong., 1st Sess. (1959), cited in 2 U.S. Code Cong. & Adm. News 2424, 2436 (1959). By defining good cause so imprecisely, "Congress deliberately left it largely to the court to determine the legality of trusteeships." Jolly v. Gorman, supra, at 966.

Given the statutory presumption in favor of the validity of a trusteeship, the Court should proceed with extreme

[21] Because the charges of undemocratic procedures and administrative malfunctioning were entirely irrelevant to the institution of the trusteeship, the Court concerns itself only with the events surrounding the December 14, 1971 Hudson County election.

caution so as not to substitute its own judgment for that of the international, for whose expertise Congress apparently had a high regard. I.B.E.W. Local 1186 v. Eli, supra. If in this case the International had determined that the loss of a major representation election was equivalent to a dissolution or threat of dissolution of Council No. 61 and dissipation of its funds and thereupon directed the trustee to take control (theory #1), the trusteeship would not have been justified, as it appears unrebutted from the record that Kaplan, the International representative, assumed full command of the election campaign to the point of adopting a campaign strategy vigorously opposed by the officers of Council No. 61. If the international had determined that Murphy's letter purporting to halt dues check-off in Hudson County constituted a dissipation of funds so as to justify a trusteeship (theory #2), the logic is tenuous, as we have seen that the letter was entirely ineffective because only members have the right to cancel the check-off. It would be equally difficult to say that the psychological blow to the International's case would have warranted a trusteeship. Great justification for the trusteeship could have been placed in the theory that the International was unable to file objections to the election in its own right and therefore required a trustee to do so[22] (theory #3), in the hope of overturning the election and preventing a critical loss of membership. However, PERC rules require the filing of any election objection within five days of the election (December 14, 1971), and if this were the International's true intent, the trusteeship would not have been tardily implemented January 12, 1971.

[22] The Teamsters moved successfully before PERC to have the AFSCME appeal dismissed because the International was not a party to the proceedings; only Council No. 61, which refused to sign objections, had adequate standing.

Perhaps the most inviting as well as the most accurate theory for the trusteeship is that the International became thoroughly disgusted with what it regarded as incompetent leadership and resolved to prevent further loss of members and money by appointing as trustee a man whom it considered an able, trustworthy field representative. As can be seen by even a cursory view of the evidence in this case, however, the trustee, Louis Kaplan, has been doing anything but acting to preserve the integrity of Local 1959. He has in fact almost since the inception of this litigation been about the active disembodiment of Local 1959 presumably with orders from the highest levels, by encouraging the chapters of Local 1959 to become chartered locals.[23] Council No. 61, which has been practically synonomous with Local 1959, has been receiving the dues check-offs from the chapters of Local 1959. It has no charter, for whatever reasons, and therefore cannot expect to receive a portion of the dues which a local would normally pay its council. As the chapters of 1959 are gradually autonomized and develop their own independent treasuries, the resources of Local 1959 and Council No. 61 are correspondingly dried up. If it is unable to halt this pincer attack, Local 1959 will disappear as an entity, as it is nothing more than the sum of its chapters, and Council No. 61 will be charterless, fundless, and helpless. The International will by then have reduced to reality its desire to oust the leadership of Council No. 61. Thus, it may

[23] By letter of January 13, 1972, Kaplan informed all members of Council No. 61 that he would arrange a meeting with all chapters to reorganize each as a local. Once the locals had been formed, said Kaplan, a special convention would be convened to approve and adopt a constitution for Council No. 61 and elect its officers, at which time the trusteeship would be terminated. The Bayonne chapter of Local 1959 was chartered as Local 2261 on or about March 7, 1972. Although the hearing has since expired, counsel for plaintiff represents to the Court that additional chapters have since been likewise chartered.

be seen that the trusteeship, though it may have been actuated by a lawfully colorable purpose, is permeated with the scheme of ousting the leadership of Council No. 61 and Local 1959 permanently by eliminating their source of revenue, i.e., by chartering the chapters of Local 1959, solely because of the International's extreme distaste for those subordinate officers. It is true that the presence of a noncompelling motive for installing a trustee will not invalidate the trusteeship where a valid motive exists. I.B.E.W. Local 1186 v. Eli, supra. But even assuming that the trusteeship was set in motion by a lawful purpose, a dubious premise in any event, it is equally true that the presence of an illegal motive, proven by clear and convincing evidence, will vitiate whatever proper motive also underlay the trustees' appointment. The validity of the trusteeship is thereby nullified. Section 304, 29 U.S.C. §464(c). The only lawful way by which the International might have acted to remove the officers of Local 1959 and Council No. 61 was the filing of charges pursuant to the AFSCME Constitution, Article X, which delineates elaborately the bases for filing charges, the rights of the accused, the hearing procedure and the penalties for violations.[24] The trusteeship was used to circumvent the hearing process and was therefore imposed for an illegal purpose. The trusteeship must therefore be dissolved and enjoined from further operation. All acts undertaken by the trustee on behalf of the International to weaken or injure the economic and political integrity of Local 1959 or Council No. 61 are similarly unlawful and must be rescinded.

[24] Moreover, the right of a union officer to a list of specified, written charges, reasonable time to prepare his defense, and a full and fair hearing is protected by §101(a)(5) of the Landrum-Griffin Act, 29 U.S.C. §411(a)(5).

Plaintiffs will be allowed reasonable attorney fees, Gartner v. Soloner, 304 F.2d 348 (3d Cir. 1967), cert. denied, 390 U.S. 1040 (1968), with court costs against the defendants.

Let an appropriate order be submitted.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 72-1645

NEW JERSEY COUNTY AND MUNICIPAL COUNCIL NO. 61, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, NEW JERSEY PUBLIC AND CIVIL SERVANTS EMPLOYEES, LOCAL 1959, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, ROBERT C. MURPHY, FRANK BASSILO and RITA FURNISS,

Appellees,

v.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, JERRY WURF, individually and as International President of American Federation of State, County and Municipal Employees, LOUIS KAPLAN, individually and as Trustee of New Jersey Public and Civil Servants Employees, Local 1959, and CHARLES KELLER,

Appellants.

(D. C. CIVIL ACTION NO. 196-72)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued November 16, 1972

Before Aldisert, Gibbons and Hunter, Circuit Judges

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Opinion and Judgment of Court of Appeals
(Filed May 4, 1973)

Hunter, Circuit Judge.

This is an appeal from a district court judgment and permanent injunction which, inter alia, enjoins appellant American Federation of State, County and Municipal Employees, AFL-CIO (the international), from maintaining a trusteeship which it had imposed over one of its constituent local unions, Local 1959.[1] Since we find that the district court had no subject matter jurisdiction in this matter, we reverse the judgment and order that the complaint be dismissed. The facts in this case were reviewed

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[1] While it appears that the trusteeship in question was imposed only over Local 1959, there existed at the same time an unchartered organization known as New Jersey County and Municipal Council No. 61 which had been designed as the successor of Local 1959. The district court found that Council No. 61 was a viable entity having a de facto existence, and that it and Local 1959 constituted a hybird organization. Accordingly, all references to Local 1959 in this opinion shall be deemed to include Council No. 61.

at length by Chief Judge Coolahan in his June 20, 1972 opinion, and it is unnecessary to repeat them here.[2]

Appellants have raised several arguments before this court, but the only one which we must consider is whether the district court had jurisdiction to enjoin the international under Title III of the Labor Management Reporting and Disclosure Act of 1959 ("Act" or "LMRDA"), 28 U.S.C. §§461-466. Section 302 of that Act, 28 U.S.C. §462, states in pertinent part:

> "Trusteeships shall be established and administered by a *labor organization* over a *subordinate body* only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of . . . otherwise carrying out the legitimate objects of such labor organization. (Emphasis added.)

The litigants agree that the international is a "labor organization" as defined in §2(i) and (j) of the Act, 29 U.S.C. §402(i) and (j),[3] since it has chartered a small

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[2] New Jersey County and Municipal Council No. 61 v. American Fed'n of State, County and Municipal Employees, No. 196-72 (D.C. N.J. June 20, 1972).

[3] §2(i) of the Act provides:

> "(i) 'Labor organization' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body."

§2(j) of the Act provides in pertinent part:

> "(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it—
>
> (1) is the certified representative of employees under the provisions of the National Labor Relations Act, . . . or
>
> (2) although not certified, is a national or international labor organization or a local organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce, or . . ."

number of local unions which represent employees in the private sector. On the other hand, Local 1959 is not a "labor organization" under the Act because its charter limits its membership exclusively to Hudson County, New Jersey public and civil service employees. §§2(e), (i) and (j), 29 U.S.C. §§402(e), (i) and (j).[4] Consequently, the issue which we are required to decide is whether a trusteeship imposed by a parent "labor organization" upon a local which is not a "labor organization" is regulated by the trusteeship provisions of Title III. Appellants argue that the term "subordinate body" [5] was used in Title III interchangeably with the term "subordinate labor organization," and that the imposition of a trusteeship over Local 1959 is not governed by the Act since Local 1959 is not a "subordinate labor organization" and thus not a "subordinate body" as that term is used in §302. Appellees disagree with this interpretation and contend instead that Congress meant to distinguish between a "subordinate body" and a "subordinate labor organization."

In addressing this problem, we first observe that the LMRDA has six titles "dealing with various facets both of internal union affairs and of labor-management relations." Wirtz v. Bottle Blowers Ass'n., 389 U.S. 463, 469 (1968). Putting aside Title III for the moment, our examination of the Act reveals that its other five titles specifically apply only to "labor organizations" and thus do not affect public employee unions. Title I enacts a bill of rights for

[4] Municipal governments are not recognized as employers under the LMRDA. §2(e) provides in pertinent part:

> "(e) 'Employer' means any employer or any group or association of employers engaged in an industry affecting commerce . . . but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof."

Consequently, a union like 1959 which represents only municipal employees cannot be a "labor organization" within the meaning of the Act.

[5] The term "subordinate body" is not defined in the Act.

members of labor organizations; Title II involves reporting by labor organizations, officers and employees of labor organizations, and employers; Title IV concerns itself with elections in labor organizations; Title V provides various safeguards for labor organizations; and Title VI consists of certain miscellaneous provisions. Viewing the Act as a whole, it thus seems that if Congress had intended Title III to regulate the manner in which a trusteeship may be imposed upon a public employee union, it would clearly have said so. This it did not do. Nevertheless, it is true that Title III, alone among the Act's provisions, sometimes uses the phrase "subordinate body" rather than "labor organization." Consequently, a section by section examination of Title III is necessary in order to determine whether or not "subordinate body" was meant to include public employee unions.

Title III contains four operative sections, §§301 through 304 of the Act, 29 U.S.C. §§46-464.[6] Section 301(a), 29 U.S.C. §461(a), establishes reporting requirements which a "labor organization" must comply with whenever it "assumes trusteeship over any subordinate labor organization."[7] Public employee unions are not covered by §301

[6] Section 305 and 306 of the Act, 29 U.S.C. §§465 and 466, are also part of Title III. However, since these sections do not deal with the establishment, maintenance or dissolution of a trusteeship, they have no bearing on this case and will not be discussed further.

[7] §301(a) of the Act provides in pertinent part:

> "(a) Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file . . . within thirty days after . . . the imposition of any such trusteeship, and semi-annually thereafter, a report . . . containing the following information: (1) the name and address of the subordinate organization: (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the subordinate organization in the selection of delegates to represent such organization. . . . The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed

because, as we have noted, these unions are not "labor orgaizations" under the Act. Since a principal reason for §301 is to prevent violations of the substantive trusteeship requirements of §§302 and 303, 29 U.S.C. §§462 and 463, and to provide information about any possible violation, we agree with appellants that it is unlikely that the range of trusteeships governed by those sections would exceed that which is protected by the reporting provisions of §301. This is also consistent with the manifest Congressional intent in the other five titles of the Act to exclude public employee unions.

While §301 indicates that Title III does not regulate trusteeships over public employee unions, §303 demonstrates even more strongly that this is so.[8] Its heading reads "Unlawful acts relating to *labor organizations* under trusteeship," yet the text of §303(a) ends with a proviso that uses the term *"labor organization"* for the exact entity that the rest of that section discussed as a "subordinate body." (Emphasis added.) Plainly, then, Congress used these terms interchangeably in §303.

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over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 431(b) of this title. . . ."

[8] §303 of the Act provides:

"Unlawful acts relating to labor organization under trusteeship

"(a) During any period when a subordinate body of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate, or (2) to transfer to such organization any current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship: Provided, That nothing herein contained shall prevent the distribution of the assets of a *labor organization* in accordance with its constitution and bylaws upon the bona fide dissolution thereof." (Emphasis added.)

The two remaining sections of Title III are §§302 and 304, 29 U.S.C. §§462 and 464. Section 302, which was quoted in part at the beginning of this opinion, establishes the purposes for which a trusteeship may be imposed, and it is this section which appellees claim was violated when appellants placed Local 1959 under trusteeship. The other section, §304, deals with procedural aspects of enforcing or challenging a trusteeship. Both of these sections use the term "subordinate body," and thus appellees argue that there is a distinction between "subordinate body" and "labor organization" or "subordinate labor organization." We cannot accept this literal interpretation of these two sections. As the Supreme Court has cautioned, labor legislation, and particularly the LMRDA, should not be construed literally but rather "against the background of its legislative history and in the light of the general objectives Congress sought to achieve." Wirtz v. Bottle Blowers Ass'n., supra at 468; National Woodwork Mfrs. v. NLRB, 386 U.S. 612, 619 (1967). Appellees do not discuss the legislative history of the Act, and our examination of this history has revealed nothing to indicate that Congress intended to include public employee unions as subordinate bodies in §§302 and 304 while explicitly excluding them from the rest of the Act.

In summary, after considering the legislative history of the LMRDA, its express exclusion of public employee unions from the definition of 'labor organization" in §§2(e), (i) and (j), its failure to regulate these unions in the other five titles of the Act, the use of the term "subordinate labor organization" in §301, and the interchangeability of the terms "labor organization" and "subordinate body" in §303, the only conclusion which we can reasonably reach is that public employee unions are not covered by the phrase "subordinate body" in §§302 and 304.

The judgment of the district court is reversed and this case is remanded to the district court so that the complaint may be dismissed in accordance with this opinion.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit.

SUPREME COURT, U. S.

No. 73-228

Supreme Court, U. S.
FILED
AUG 31 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NEW JERSEY COUNTY AND MUNICIPAL COUNCIL NO. 61, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, NEW JERSEY PUBLIC AND CIVIL SERVANTS EMPLOYEES LOCAL 1959, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, ROBERT C. MURPHY, FRANK BASSILO and RITA FURNISS, *Petitioners,*

v.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, JERRY WURF, individually and as International President of American Federation of State, County and Municipal Employees, LOUIS KAPLAN, individually and as Trustee of New Jersey Public and Civil Servants Employees, Local 1959 and CHARLES KELLER, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 44a-51a) is not yet reported. The opinions of the Federal District Court for the District of New Jersey (Pet. App. 1a-43a) are not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on May 4, 1973. The petition was filed on August 2, 1973. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Title III of the Labor-Management Reporting and Disclosure Act of 1959 confers upon federal courts jurisdiction to entertain challenge to a trusteeship established by a parent labor organization over a local union which, because it represents only public employees, is not a labor organization within the meaning of the Act.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 520-521, 530-532, 29 U.S.C. §§ 402(e), (i), (j), 461-464, are set forth in Appendix A.

STATEMENT OF THE CASE

This is an action seeking to challenge the establishment of trusteeship in January of 1972 by respondent American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter "AFSCME" or "Respondent AFSCME") over petitioner New Jersey Public and Civil Servants Employees Local 1959, AFSCME, AFL-CIO (hereinafter "Local 1959" or "petitioner Local 1959") pursuant to the International Constitution of AFSCME. The action was brought under the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter "the Act"), 29 U.S.C. § 464(a), and the complaint

alleged that the trusteeship was not established for a purpose allowable under 29 U.S.C. § 462.

The actions of Local 1959 which brought about the imposition of trusteeship and the reasons for its imposition were not considered by the court of appeals nor are they raised by the Petition.

It is undisputed by the parties that respondent AFSCME is a "labor organization" as defined by 29 U.S.C. § 402(i) and that petitioner Local 1959, although a subordinate body of AFSCME, is not a "labor organization" within the meaning of the Act because its membership consists solely of employees of political subdivisions of a state and its jurisdiction is limited to such employees.

In the courts below, respondents challenged subject matter jurisdiction on the ground that Title III of the Act, its trusteeship provisions, apply only to trusteeships over subordinate labor organizations. The district court rejected respondents' contention, both initially on motion and in its final opinion and judgment. The court of appeals, however, agreeing with the respondents' position, concluded that Title III, like the rest of the Act, was intended to apply only to labor organizations, and therefore did not confer jurisdiction to entertain the case. Accordingly, the court of appeals entered judgment reversing the district court and directing dismissal of the complaint.

ARGUMENT

The decision of the court of appeals is clearly correct and there is no conflict of decisions. Review by this Court is thus not warranted.

1. After analyzing the entire Act, the court of appeals concluded that the phrases "labor organization," "sub-

ordinate labor organization," and "subordinate body" had been used interchangeably in Title III, and that the Act could be properly interpreted only if all were read to mean "subordinate labor organization." A trusteeship over a local union which represents only public employees and is, therefore, not a labor organization within the meaning of the Act, is thus not regulated by Title III. The court derived its conclusion from the statutory scheme, wherein all titles other than this one expressly have no application to such public employee unions, as well as from the precise manner in which the alternative phrases are used in the four operative sections of Title III. Its conclusion is also consonant with the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151 *et seq.*), which establishes collective bargaining rights for most labor unions, but excludes public employee unions from its coverage. Thus, the court below has followed this Court's teaching that the Act's "proper construction frequently requires consideration of its wording against the background of its legislative history and in the light of the general objectives Congress sought to achieve." *Wirtz* v. *Bottle Blowers Assn.*, 389 U.S. 463, 468. Its reading of the sections here involved is proper, and petitioners offer no real argument to the contrary.

2. The few decisions squarely deciding this issue are consistent with that of the Third Circuit below. There is but one other appellate decision on the issue, that of the U.S. Court of Appeals for the Tenth Circuit in *Colorado Labor Council AFL-CIO,* v. *AFL-CIO,* Case No. 72-1701 (C.A. 10, decided June 20, 1973, reh. den. Aug. 6, 1973) (the opinion, which is not yet reported, is set forth in Appendix B hereto). That case involved

a trusteeship imposed by the AFL-CIO over the Colorado Labor Council, an association of labor unions in Colorado that is affiliated with and chartered by the AFL-CIO. Under Section 2(i) of the Act, 29 U.S.C. 402(i), the Colorado Labor Council, as a state central body, does not come within the Act's definition of labor organization.[1] Thus the case involved the precise question here at issue: whether a trusteeship established over a subordinate body which is not a labor organization as defined by the Act is nevertheless governed by the Act.

The Tenth Circuit went through essentially the same analysis as did the court below and concluded:

> [W]e are of the firm view that Sections 302 and 304 of Title III should not be read literally and that, when read in context, the phrase "subordinate body" as used in these two sections means, and is limited to, "subordinate labor organizations". (Appendix B, *infra*, p. 14a)

Apparently in an attempt to create the appearance of a conflict, petitioners note (Pet., p. 5) that "[t]his issue is also now pending rehearing on appeal in the Tenth Circuit in the matter of *Colorado Labor Council v. American Federation of Labor and Congress of Industrial Organizations,* (D. Col. 1972)." Whether it ever may be argued that a conflict in decision exists because a petition for rehearing has been filed in one of two cases that have reached the same result, it is

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[1] As in the case of AFSCME International, the AFL-CIO has chartered local unions which represent or seek to represent employees of employers engaged in an industry affecting commerce. Therefore, the AFL-CIO is a labor organization within the meaning of the Act.

impossible to do so where the petition for rehearing explicitly eschews the issue in question. Yet, the first paragraph of the petition for rehearing filed by the Colorado Labor Council states:

> In this petition for rehearing, plaintiffs-appellees do not ask this Court to reconsider its decision that sec. 302, LMRDA [29 U.S.C. § 462], is applicable only to subordinate labor organizations and that the Colorado Labor Council therefore is not entitled to the benefit of its provisions. We request only that. . . . (See Appendix C, *infra,* p. 16a.)

As noted above, the petition for rehearing has been denied.

The only other case deciding this issue is *Cobb* v. *American Federation of State, County and Municipal Employees, AFL-CIO,* Civil Action No. 31282, (E.D. Mich., decided Aug. 30, 1968) in which the court dismissed a complaint challenging a trusteeship imposed over a subordinate body consisting solely of public employees, on the ground that the provisions of Title III apply only to trusteeships over subordinate labor organizations. (This unreported decision is set forth in Appendix D hereto.) Thus, all three cases deciding this issue are in accord in upholding respondents' position.

In a number of other cases, all involving the United Mine Workers, the parent union argued that its trusteed districts were not "labor organizations" and that therefore the Act was inapplicable. Finding, in each case, that the subordinate body was a labor organization, the courts did not reach the issue with which we are concerned. See *Brennan* v. *UMW,* 475 F.2d 1293, 1296 (C.A.D.C.); *Monborne* v. *UMW,* 342 F. Supp.

718, 722 (W.D. Pa.); *Cross* v. *UMW*, 353 F. Supp. 504, 507 (S.D. Ill.).

The decisions of the Third and Tenth Circuit Courts of Appeals are in harmony also with the interpretation of Title III by the Secretary of Labor. The Secretary, who is responsible for administering most of the Act, participated as amicus curiae in the *Colorado Labor Council* case in the Tenth Circuit. His position there was, in brief, that a trusteeship within the reach of the Act can only be one in which both the parent and the subordinate body are labor organizations as that term is defined in the Act, so that the Colorado District Court lacked jurisdiction over the action. In the case at bar, the position of the Department of Labor was presented to the court below through a letter, filed in a supplemental appendix, from the Director of the Office of Labor-Management and Welfare Pension Reports, U.S. Department of Labor, to counsel for the respondents. (For the convenience of the Court, the letter is reproduced in Appendix E.) The Director is the official charged with the responsibility to investigate complaints under Section 304(a) of the Act, alleging violations of its trusteeship provisions. His letter concludes:

> [T]he Department of Labor has consistently taken the position, that an all government employee local is not a labor organization within the meaning of the Act, and therefore, *none of the provisions of Title III of the Act apply to the relationship between a parent labor organization and a local which is not a labor organization.* (Appendix E, *infra,* at p. 20a, emphasis added.)

It is well settled that the interpretation of a statute by the official principally charged with its adminis-

tration is entitled to great weight. *Udall* v. *Tallman,* 380 U.S. 1, 16; *Norwegian Nitrogen Products Company* v. *United States,* 288 U.S. 294, 315; *Brewster* v. *Gage,* 280 U.S. 327, 336; 1 Davis, *Administrative Law,* Section 5.01 at 289, 290 (1958).

3. The outcome of this case is of little importance to others than the Respondent AFSCME and those of its subordinate bodies that consist solely of public employees. There are few other national or international unions having subordinate bodies that are not labor organizations within the meaning of the Act. The paucity of decisions dealing with the issue herein during the fourteen years since passage of the Act indicates the minor impact of any decison on this issue.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

Statutory Provisions Involved

The Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, 73 Stat. 519 *et seq.* as amended, 29 U.S.C. §§ 401 *et seq.*, provides in pertinent part:

DEFINITIONS

SEC. 3. For the purposes of titles I, II, III, IV, V (except section 505) and VI of this Act—

* * * *

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

* * * *

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it—

(1) is the certified representative of employees under the provision of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

* * * *

TITLE III—TRUSTEESHIPS

REPORTS

SEC. 301. (a) Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after the date of the enactment of this Act or the imposition of

any such trusteeship, and semiannually thereafter, a report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the subordinate organization; (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the subordinate organization in the selection of delegates to represent such organization in regular or special conventions or other policy determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization. The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 201(b) signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization.

(b) The provisions of section 201(c), 205, 206, 208, and 210 shall be applicable to reports filed under this title.

(c) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(d) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any report required under the provisions of this section or willfully makes any false entry in or willfully withholds, conceals, or destroys any documents, books, records, reports, or

statements upon which such report is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) Each individual required to sign a report under this section shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

PURPOSES FOR WHICH A TRUSTEESHIP MAY BE ESTABLISHED

SEC. 302. Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

UNLAWFUL ACTS RELATING TO LABOR ORGANIZATION UNDER TRUSTEESHIP

SEC. 303. (a) During any period when a subordinate body of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate or (2) to transfer to such organization any current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship: *Provided*, That nothing herein contained shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution therof.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

ENFORCEMENT

SEC. 304. (a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing

proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

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APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MAY TERM—1973

No. 72-1701

Filed
JUN 20 1973

COLORADO LABOR COUNCIL, AFL-CIO,
an unincorporated association,
HERRICK ROTH AND A. TOFFOLI,
Plaintiffs-Appellees,

v.

AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
an unincorporated association,
GEORGE MEANY AND DANIEL J. HEALY,
Defendants-Appellants.

Appeal from the United States District Court
For the District of Colorado
(D.C. No. C-4342)

Philip Hornbein, Jr. (Roy O. Goldin with him on the brief), for Plaintiffs-Appellees.

Thomas E. Harris, Associate General Counsel, AFL-CIO (J. Albert Woll, General Counsel, AFL-CIO, Robert C. Mayer, Laurence Gold, Donald P. MacDonald and James C. Fattor, with him on the brief), for Defendants-Appellants. Harlington Wood, Jr., Assistant Attorney General, James L. Treece, United States Attorney, Morton Hollander and William Kanter, Attorneys, Department of Justice; and Richard F. Schubert, Solicitor of Labor, Beate Block, Associate Solicitor, Harper Barnes, Regional Solicitor, and Cornelius S. Donoghue, Jr., Attorney, Department of Labor, of Counsel, on the brief, on behalf of the Secretary of Labor, as Amicus Curiae.

Before LEWIS, Chief Judge, and BREITENSTEIN and McWILLIAMS, Circuit Judges.

PER CURIAM.

This is an appeal from a preliminary injunction issued by the United States District Court for the District of Colorado prohibiting the effectuation of a trusteeship sought to be imposed by the AFL-CIO over the Colorado Labor Council. In our view, the trial court had no jurisdiction over the subject matter sought to be litigated and accordingly lacked jurisdiction to enter the injunctive order here complained of. Resolution of the controversy involves a consideration of the Labor-Management Reporting and Disclosure Act of 1959, hereinafter referred to as the Act. Some background information is needed if the narrow issue here to be decided is to be placed in focus.

The AFL-CIO is an unincorporated association, headquartered in Washington, D. C., whose membership is composed of affiliated national and international unions, local unions, State and local central bodies, and trade and industrial departments. As concerns state and local central bodies, the rules of the AFL-CIO provide that state and local central bodies which are granted charters by the AFL-CIO shall conform their activities on national affairs to the policies of the AFL-CIO.

The Colorado Labor Council, hereinafter referred to as the Council, is an unincorporated association chartered by the AFL-CIO in 1956 and headquartered in Denver, Colorado, with its membership being composed of national and international unions affiliated with the AFL-CIO and operating in Colorado, and as such the Council is a state central body.

Without going into great detail, sometime in July 1972, a controversy arose between the AFL-CIO and the Council concerning the endorsement of a candidate for the office of President of the United States. AFL-CIO, on the one hand, determined not to endorse any candidate for the office, but

at the same time permitted "affiliates" to endorse any candidate of their choice. By subsequent statement, "affiliates" were declared by the AFL-CIO to be only national and international unions, and not state and local central bodies, such as the Council. The Council, however, interpreted the foregoing pronouncements from its parent body to mean that it was free to endorse a candidate of its choice, notwithstanding the clarification pronouncement that it was not considered to be an affiliate. Accordingly, the Council on August 7, 1972, adopted a resolution endorsing the candidacy of Senator George McGovern for President.

Based on the foregoing events, AFL-CIO instituted internal disciplinary proceedings against the Council, which culminated in a suspension of the Council's charter and the appointment of a trustee to take charge of and conduct the business of the Council in place of its duly elected officials, the latter being suspended from office. When the trustee arrived in Denver, Colorado, prepared to assume control of the Council as trustee, the Council rejected the trusteeship and brought suit in the United States District Court for the State of Colorado seeking to enjoin the imposition of the trusteeship.

Council's complaint was based upon Sections 302 and 304 of the Act, and it was alleged that the proposed imposition of a trusteeship over the Council by the AFL-CIO was in contravention of the provisions of the aforesaid Sections 302 and 304 of the Act. Jurisdiction was based upon those sections of the Act and also upon 28 U.S.C. § 1337. After an evidentiary hearing, the trial court determined that it had jurisdiction and entered a preliminary injunction enjoining the AFL-CIO from imposing a trusteeship on the Council. Pursuant to the provisions of 28 U.S.C. § 1292(a), AFL-CIO now seeks review of that injunctive order. As indicated, we are of the view that the trial court lacked jurisdiction over the subject matter of the controversy and accordingly was without jurisdiction to enter the preliminary injunction here complained of.

In arguing that the trial court had jurisdiction over the subject matter of the controversy between the parties to the end that the trial court had the requisite jurisdiction to enter the injunctive relief prayed for, the Council, as indicated, relies primarily on Sections 302[3] and 304[4] of Title III of the Act as conferring such jurisdiction.

Before considering the several sections of Title III, it would be well to bear in mind one of the several definitions appearing in the preamble to the Act itself. The phrase "labor organization" is first carefully defined in considerable detail in affirmative language, and then the definition concludes with the negative language that a "labor organization" is something "other than a state or local central body." In this regard, counsel are in apparent agreement that the Council is a state central body and not a "labor organization," as the latter is defined in the Act.

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[3] "Sec. 302. Trusteeships shall be established and administered by a labor organization over a *subordinate body* only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the *subordinate* body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization." (Emphasis added.)

[4] "Sec. 304. (a) Upon the written complaint of any member or *subordinate body* of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or *subordinate body* of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate." (Emphasis added.)

The fact that the Council is not a "labor organization" as defined in the Act goes to the heart of the controversy. In this regard, AFL-CIO and the Secretary of Labor, as amicus curiae, contend that the provisions of Title III relating to the imposition of a trusteeship by a labor organization contemplate only the imposition of a trusteeship by a parent labor organization over a subordinate labor organization and have no application to the situation where, as here, a labor organization attempts to impose a trusteeship over a state central body, since the latter is not a labor organization.

The Council argues that on the contrary, Sections 302 and 304 refer to the imposition of a trusteeship by a labor organization over a "subordinate body" and that the Council, being a "subordinate body" to the AFL-CIO, is entitled to avail itself of the limitations placed on the imposition of a trusteeship by Section 302 and of the provisions of Section 304 permitting a subordinate body to seek injunctive relief in the federal district court. In rejoinder to this particular argument, the AFL-CIO counters that if the phrase "subordinate body," as used in Sections 302 and 304 of the Act, be read in context, then the phrase "subordinate body" means "subordinate labor organization." We agree with this latter interpretation.

Counsel for both sides rely to some extent on the legislative history of the Act as supporting their particular interpretation of Title III. We regard the legislative history to be inconclusive, and prefer to resolve the matter on the basis of the Act itself. In reaching the conclusion that Title III is concerned only with the imposition of a trusteeship by a labor organization over a subordinate labor organization, and does not concern itself with the imposition of a trusteeship over a subordinate body such as a state central body, we are influenced by the following factors:

1. As indicated, in the definition section of the Act, the phrase "labor organization" is defined, inter alia, as being

something "other than a state or local central body." The Act consists of six titles, and it is undisputed that Titles I, II, IV, V and VI have no application to state central bodies. In such circumstance we are disinclined to hold that out of the entire Act, Title III alone, and only two sections at that, has application to state central bodies, in the absence of a clear and unmistakable legislative intent that such was in fact intended. We find no such clear and unmistakable legislative intendment.

2. Section 301 [3] of Title III by its express terms clearly applies only in the case of a trusteeship imposed on a subordinate labor organization, with that particular section requiring periodic accounting by the parent body when it imposes a trusteeship on a subordinate labor organization.

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[3] "Sec. 301. (a) Every labor organization which has or assumes trusteeship over any *subordinate labor organization* shall file with the Secretary within thirty days after the date of any such trusteeship, and semiannually thereafter, a report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the *subordinate organization;* (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the *subordinate organization* in the selection of delegates to represent such organization in regular or special conventions or other policydetermining bodies and in the election of officers of the labor organization which has assumed trusteeship over such *subordinate organization.* The initial report shall also include a full and complete account of the financial condition of such *subordinate organization* as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a *subordinate labor organization* shall file on behalf of the subordinate labor organuization the annual financial report required by section 201(b) signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization." (Emphasis added.)

Such being the case, it is difficult for us to understand why Congress would not similarly provide that when a labor organization imposes a trusteeship over a "subordinate body," such as a state central body, it must also make a periodic accounting of its trusteeship. Yet such is clearly not the case. So, assuming for the moment that Sections 302 and 304 of Title III be held to encompass state central bodies, as well as subordinate labor organizations, then in the case of a trusteeship over a subordinate labor organization the parent body must make a periodic accounting, but when it imposes a trusteeship over a subordinate body, such as a state central body, it need not make any periodic accounting. We do not believe that Congress intended any such different handling, all of which leads us to conclude that it was not the intent of Congress to include state central bodies under the coverage of any section of Title III.

3. Section 303 [4] of Title III uses the phrase "labor organization under trusteeship" in its heading. Hence, we assume, and with justification we believe, that the body of Section 303 is concerned with, and limited to, "labor organizations under trusteeship." Nevertheless, the phrase "subordinate body" is used in the body of that section four times and

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[4] "Unlawful Acts Relating to *Labor Organizations Under Trusteeship.*

"Sec. 303. (a) During any period when a *subordinate body* of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such *subordinate* body were eligible to participate or (2) to transfer to such organization any current receipts or other funds of the *subordinate body* except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship: *Provided,* That nothing herein contained shall prevent the distribution of the assets of a *labor organization* in accordance with its constitution and bylaws upon the bona fide dissolution thereof." (Emphasis added.)

then a switch is made and the phrase "labor organization" is next and last used in the proviso clause. Thus the two phrases "labor organization under trusteeship" and "subordinate body" are used, in a very real sense we submit, interchangeably in Section 303. Such suggests to us quite strongly that Congress contemplated that the "subordinate body" under trusteeship would be a "subordinate labor organization."

We conclude that the Council in a literal sense is a "subordinate body" of the AFL-CIO. However, the Supreme Court has cautioned against a literal reading of labor legislation in general, and the Act in particular. Wirtz v. Bottle Blowers Association, 389 U.S. 463 (1968). And for the reasons above stated we are of the firm view that Sections 302 and 304 of Title III should not be read literally, and that, when read in context, the phrase "subordinate body" as used in those two sections means, and is limited to, "subordinate labor organizations."

The Council also contends that regardless of the construction given Sections 302 and 304 of the Act, the trial court nonetheless had subject matter jurisdication by virtue of the provisions of 23 U.S.C. § 1337.[5] In this regard, it has been held that although § 1337 confers jurisdiction, it does not in and of itself create a cause of action. *See,* for example, B. F. Goodrich Company v. Northwest Industries, Inc., 424 F.2d 1349 (3d Cir. 1970). Assuming that the requirements of § 1337 were otherwise met, it is clear to us that the action which the Council seeks to maintain in nowise arises under the Act. For the reasons set forth above, we have held to the contrary. Accordingly, § 1337 does not in and of itself confer jurisdiction upon the trial court to enter the preliminary injunction here complained of.

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[5] "The district courts shall have jurisdiction of any civil action or proceeding arising under any act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

The Third Circuit, in a factual situation akin to that of the instant one, has quite recently reached the same result as have we and on similar reasoning. New Jersey County and Municipal Council No. 61 v. American Federation of State, County and Municipal Employees, F.2d , their case No. 72-1645, decided May 4, 1973. There, as here, the trial court enjoined the affectuation of a trusteeship by a parent labor organization over a subordinate body which, under the Act, was not a labor organization. There, the subordinate body over which the trusteeship was sought to be imposed was not a state central body, but a local union which limited its membership to *public* employees and accordingly under the terms of the Act was not a labor organization. In such setting, the Third Circuit stated that the "only conclusion which we can reasonably reach is that public employee unions are not covered by the phrase 'subordinate body' in §§ 302 and 304." Accordingly, the Third Circuit reversed the trial court on the ground that under the circumstances it had "no subject matter jurisdiction."

The preliminary injunction heretofore entered by the trial court is accordingly vacated and the cause is now remanded to the trial court with directions to dismiss the action.

APPENDIX C

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 72-1701

COLORADO LABOR COUNCIL, AFL-CIO,
an unincorporated association,
HERRICK ROTH and A. TOFFOLI,
Plaintiffs-Appellees,

v.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
an unincorporated association,
GEORGE MEANY and DANIEL J. HEALY,
Defendants-Appellants.

ON APPEAL FROM THE UNITED DISTRICT COURT
FOR THE DISTRICT OF COLORADO
(D.C. No. C-4342)

Petition for Rehearing

In this petition for rehearing, plaintiffs-appellees do not ask this Court to reconsider its decision that sec. 302, LMRDA [29 USC § 462], is applicable only to subordinate labor organizations and that the Colorado Labor Council therefore is not entitled to the benefit of its provisions. We request only that . . . .

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL ACTION
No. 31282

ALTON COBB,

Plaintiff

vs.

INTERNATIONAL UNION, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

Defendant

Memorandum Opinion and Order Granting Defendant's Motion to Dismiss

On June 19, 1968, the defendant, International Union, American Federation of State, County and Municipal Employees, AFL-CIO, moved this Court on a number of grounds to dismiss the above captioned case. In view of the fact that the Court finds that the first allegation, namely that the complaint on its face alleges matters which require the Court to apply the provisions of the Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act), 29 USC Sec. 401 et seq, to an organization which is not subject to the provisions of that Act, requires it to dismiss this cause, it is not necessary for it to consider the other grounds for dismissal set forth in defendant's motion. Plaintiff, Alton Cobb, by his attorney, Arthur Greenstone, states in his complaint that this action arises under the Act of 1959, 73 Sta. 519 et seq, 29 USC, Sec. 401 et seq.

Defendant's Motion to Dismiss was supported by a brief, and in response thereto, the plaintiff filed a brief and, also, the defendant filed a reply brief. The Court heard oral argument by counsel for the respective parties and is duly advised in the premises.

Local 26 has jurisdiction over the employees of the City of Detroit in the Department of Public Works. It appears undisputed that Local 26 of which plaintiff is a member and former president and which is a member of the defendant International is not subject to the provision of the aforesaid mentioned Act because of the composition of it's members. Notwithstanding this fact, the plaintiff asserts that the Court has jurisdiction over this cause because the defendant is a labor organization within the meaning of Section 3(i); LMRDA, 219 USC, § 402(i), i.e., (some of its member locals are not comprised of governmental employees). There is no question that the International Union is the defendant and not Local 26, but the fact remains that the substantive matters and relief requested in the complaint deal with the interworkings of Local 26, and its' relationship with the International. The Court finds that to take jurisdiction over this cause would have the effect of applying the aforementioned Act to Local 26 to which it is not subject. It must be pointed out that in the plaintiff's brief in response to defendant's motion at Page 2, it is stated that "[P]laintiff invokes jurisdiction of this Honorable Court under the Labor-Management Reporting and Disclosures Act (hereafter LMRDA) Title I, Section 101 (a)2 and Title 3, Section 302 and 304 of the same Act." Neither the complaint nor the amended complaint allege this, and the Court does not find anything on the face of those sections which grants it jurisdiction over trusteeships such as involved in the instant case. In any event, it was the Court's understanding that the question of the validity of the trusteeship was not at issue in connection with the defendant's Motion to Dismiss.

ACCORDINGLY, IT IS ORDERED that the defendant's motion be and it is hereby granted and that the above captioned case be dismissed.

/s/
DAMON J. KEITH
U.S. District Judge

DATED: August 30, 1968

APPENDIX E

October 5, 1972

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Office of Labor-Management and Welfare Pension Reports
WASHINGTON, D.C. 20210

MR. A. L. ZWERDLING
General Counsel
American Federation of State, County
and Municipal Employees, AFL-CIO
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Zwerdling:

This is in response to your October 5, 1972 letter in which you request the position of the Department of Labor with respect to whether Sections 302-304 of the Labor-Management Reporting and Disclosure Act (LMRDA) apply to the imposition of a trusteeship by a national or international union over a local all of whose members are public employees.

In its Interpretative Manual the Office of Labor-Management and Welfare-Pension Reports has given the following interpretation with respect to the application of Section 301(a) to such a situation:

> "An International union which establishes a trusteeship over a subordinate unit comprised solely of government employees is not required to comply with the reporting requirements of section 301(a) since that section applies only to trusteeship over a subordinate 'labor organization.' An organization composed of government employees is not a 'labor organization' within the meaning of section 3(i) of the Act."

In the September 1962 Report to the Congress by the Secretary of Labor upon the operation of Title III of the

LMRDA there is a clear implication on page 32 that in order for a trusteeship to exist within the meaning of Title III, both the parent and the subordinate bodies must be labor organizations within the meaning of the Act.

Although there have been no other written interpretations issued by the Department on this question, the Department of Labor has consistently taken the position, and continues to adhere to the position, that an all government employee local is not a labor organization within the meaning of the Act and, therefore, none of the provisions of Title III of the Act apply to the relationship between a parent labor organization and a local which is not a labor organization.

I trust this information will be helpful to you.

Sincerely,

/s/ Leonard J. Lubin
Director